

Flying V, Explorer, and SG Body Shapes sub-heading and repeated in the ES Body Shape subheading. Gibson's explanation and authority for this instruction are in Attachment B.

Gibson inserted an instruction detailing the purpose and procedure of depositions conducted pursuant to Fed. R. Civ. P. 30(B)(6). *See* Attachment A, Instruction Number 9. Gibson also inserts an instruction on common law rights related to unregistered trademarks, which has been a persistent theme in the juror's questions to the witnesses. *See* Attachment A, Instruction Number 18(D). Gibson's authority for these instructions is contained in the footnotes of the proposed instruction.

One hotly disputed issue is to what extent Armadillo can claim as its own the use of the Flying V and Explorer Body shape marks by the Dean Zelinsky entities and (allegedly) by Tropical Music. Gibson continues its opposition to any suggestion that Armadillo is a "successor in interest" to Dean Guitars/Tropical Music for the purposes of any prior use argument or for tacking the laches time period. As to "first use," Gibson inserted the following additional instructions:

As mentioned, one gains a trademark by using the trademark rather than by registering the trademark. In other words, a federal trademark registration means that the USPTO has formally recognized that a trademark developed by a person or entity is valid and owned by the trademark holder. As described more fully below in Instruction No. 18(E)-(H), federal registration conveys several important benefits, including the fact that the trademark becomes part of a national database of trademarks.

To the extent that the date of first use of any of the trademarks by Armadillo is an issue, you are instructed that Armadillo's use of the trademarks began, at the earliest, in 1996. In other words, you should not attribute to Armadillo the use of the trademarks, if any, by the Dean Zelinsky companies or by Tropical Music.

See Attachment A, Instruction Number 18(D), for the first quote and Attachment A, Instruction Number 19(B), for the second quote. Gibson's authority for these instructions is explained in Attachment C.

Finally, Gibson continues to believe that present tense is the proper phrasing for the genericness questions and instructions. While the language in this proposal did not change from

Docket Number 727, Gibson includes its legal authority for “present genericness” in Attachment D. Gibson’s authority comes from that filing but is reproduced here for convenience.

Respectfully submitted this 16th day of March 2025.

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served on all counsel of record via the Court's CM/ECF electronic filing system on March 16, 2025.

/s/Andrea E. Bates
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